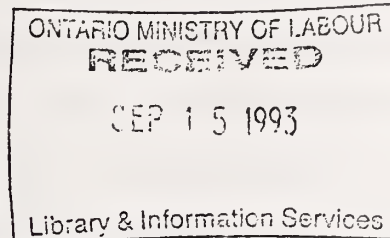


IN THE MATTER OF a Board of Inquiry appointed pursuant to s. 38 (1)  
of the Human Rights Code, R.S.O. 1990, c. H.19



B E T W E E N

CAROLE ANNE LANNIN

Complainant

and

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,  
MINISTRY OF THE SOLICITOR GENERAL,  
ONTARIO PROVINCIAL POLICE,  
DANA OSTROM,  
and DOUGLAS COBEAN

Respondents

Date of Complaint: June 2, 1989.

Amended Complaint: May 15, 1992.

Hearing: Sudbury, Ont., July 5,6,7,8 and 9, 1993.

Date of Decision: July 29, 1993.

Board of Inquiry: Lorne Slotnick

Counsel: Mark Hart, for the Ontario Human Rights Commission  
Edward Wren and Paul Ceyssens, for the Respondents

In late 1987 and early 1988, Carole Lannin was turned down for a job as a clerk/stenographer with the Ontario Provincial Police detachment in Blind River. Her complaint alleges that she was discriminated against because of age, marital status and family status, contrary to the Ontario Human Rights Code.

(The amended complaint listed Elizabeth Morin as a respondent. By agreement of the parties on April 15, 1993, Ms Morin was removed as a respondent.)

The respondents (to whom I will refer collectively as the OPP) concede that Ms Lannin was asked improper questions in two interviews for the job. Those questions related to her age, her children and her husband and his job. On the basis of these admissions by the OPP, it is not difficult to find a violation of the Code. The more difficult question is whether discrimination on the basis of age, or marital or family status, became a factor in the OPP's refusal to hire her.

#### THE FACTS

At the time of the events leading to the complaint, Ms Lannin was 46 years old. Her husband was the district manager for the

Ministry of Natural Resources in Blind River, a town of about 3,000 between Sudbury and Sault Ste. Marie. The family had lived in several locations in Ontario because Mr. Lannin was transferred and promoted. Ms Lannin had worked as a clerk/stenographer since 1961, although she was out of the paid work force for most of the 1970s to raise her children. By all accounts, she was an excellent employee.

Among her jobs was a three-year stint as a clerk/stenographer for the OPP at the Moosonee detachment in the early 1980s. Later, when the family moved to Cochrane, she filled in for vacation absences at the OPP detachment there.

Several months after she moved to Blind River, Ms Lannin got a call from Sgt. Jack Lawrence, whom she had known for a long time and who was at the time commander of the Blind River OPP detachment. Sgt. Lawrence asked her if she'd like to work as a clerk/stenographer temporarily because one of his staff members had just quit. She accepted and began working at the beginning of September, 1987, on a two-month temporary contract.

Later in September, Sgt. Lawrence was replaced by Sgt. Dana Ostrom as commander of the Blind River detachment. By the end of October, there had not yet been approval to make the job permanent, and Sgt. Ostrom extended Ms Lannin's contract until the end of December.

That fall, the OPP received approval to make the position permanent. This meant that the job had to be posted, that applicants were to be interviewed, and for this particular job, the successful candidate had to meet Ontario government standards in typing and shorthand.

Ms Lannin applied for the permanent job, and there were two other candidates--Vicky Beenen and Shawna Berry--both of whom had sent unsolicited resumes which were on file at the Blind River detachment. Interviews and typing and shorthand tests were conducted on Nov. 10, 1987.

The interviews were conducted by Sgt. Ostrom and Det.-Sgt. Charles Webb, who was from the OPP's district headquarters in Sault Ste. Marie. Det.-Sgt. Webb was apparently a last-minute stand-in for Inspector Douglas Cobean, at that time the second-in-command at the Sault Ste. Marie headquarters. Both Sgt. Ostrom and Det.-Sgt. Webb testified that this was the first time they had conducted job interviews.

Ms Lannin testified that during the interview Det.-Sgt. Webb asked her what her husband's job was, how long they would be in Blind River, and her age. She answered the questions, saying her husband's job was for a minimum of five years of which one had been completed.

Det. Sgt. Webb testified that he asked all three candidates their birth dates, and his notes of the interviews show that he recorded them. He said he probably asked all about their husbands. His notes record that Ms Beenan's husband was not subject to transfer, that Ms Berry was single, and that Ms Lannin's husband would be in Blind River for at least the next four years.

Det.-Sgt. Webb said he asked questions about birth date and marital status simply because it was a habit of his as a long-time criminal investigator. However, he admitted he would not normally ask a woman during a criminal investigation whether her husband was subject to transfer. He said he didn't know why he asked that question. He said he knows now that the questions he asked are improper.

In any event, Det.-Sgt. Webb said, age and marital status were immaterial to his assessment of candidates. The same was true, he said, on the question of whether the candidate's husband might be transferred, particularly since this division has many so-called duration postings--in which police officers who stay for a certain number of years can choose to be transferred to another location.

The same day as the interviews, the three candidates were given typing and shorthand tests, administered by Queda Yates, the



other clerical worker at the Blind River detachment. The tests were sent to Sault Ste. Marie for marking by Elizabeth Morin (known then as Elizabeth Wansbrough), a senior clerical employee.

Ms Lannin testified that she had no complaint about the tests, but that she was disturbed by the questions that were asked at the interview. She began keeping a diary of events. She said she felt that she and Sgt. Ostrom were not getting along, and described him as sometimes loud and prone to saying inappropriate things. She could not give an example, however. Sgt. Ostrom testified that he and Ms. Lannin got along well.

A week after the interview, Ms Lannin was asked to type a Competition Summary, a key piece of evidence in this case. This two-page document outlines the interviewers' thoughts on the candidates and ranks them in order of preference. The document shows that Sgt. Ostrom and Det.-Sgt Webb recommended Ms Lannin for the job, with Ms Beenen second and Ms Berry third. This form is normally forwarded to the Ministry of the Solicitor General's Human Resources Services Branch in Toronto, which ensures that the recommended applicant has passed the technical tests. This department is the only office that had authority to make the actual job offer to a candidate.

As it turned out, however, none of the three candidates in the Nov. 10 Blind River competition passed the shorthand test.

According to Doreen Fotia, a senior human resources manager in the Solicitor-General's Ministry, in this situation the position should have been reposted. Ms Fotia said district managers such as those in Blind River have no authority to offer a recommended applicant a second chance to pass the test.

Ms Lannin was given a second chance, though. Sgt. Ostrom told her on Dec. 1 that she was being offered a chance to redo the shorthand test, and the retest was scheduled for Dec. 9 in nearby Thessalon, where Ms Morin was already scheduled to conduct tests for another clerk/steno competition.

Ms Lannin was driven to Thessalon on Dec. 9 by Sgt. Ostrom, who testified that he offered to drive her because he liked her and wanted her to get the job.

Ms Lannin's shorthand test in Thessalon was conducted by Ms Morin. The shorthand test consisted of taking down in shorthand two letters that were dictated and then transcribing them on a typewriter. While Ms Lannin was transcribing the letters, she said she heard a commotion outside the office and then a constable came in to retrieve his briefcase. She said this upset her and broke her concentration. Even though Ms Morin described it as a short interruption, she and other OPP witnesses agreed it should not have happened and that it rendered that test unfair.

The next morning, back in Blind River, Sgt. Ostrom called Ms Lannin into his office and told her that she had again failed the shorthand test. Her two scores were 27% and 0; a passing grade is 75%. He said her last day would be at the end of December, and also said that Ms Berry--who had been a candidate in both the Blind River and Thessalon competitions--would likely get the job and be starting in January.

Ms Lannin says Sgt. Ostrom told her at the time, in explaining the result, that Ms Berry wanted a career whereas she, Ms Lannin, didn't. Sgt. Ostrom denies saying anything of the sort, or hearing anyone express this sentiment. Ms Lannin also says Sgt. Ostrom said he and Sgt. Allan Dawson--who at the time commanded the Thessalon detachment--had a bet going on who would get the first-place candidate in the Thessalon competition and who would get the second-place candidate. Both Sgt. Ostrom and Sgt. Dawson deny anything like this was said.

Later that same day, Ms Lannin says she discussed the matter further with Sgt. Ostrom and he said, "If it makes you feel any better, my wife thinks I'm a real shit for what I did." Sgt. Ostrom says he cannot recall saying this, but that he might have.

Ms Lannin says that the next day, Dec. 11, Sgt. Ostrom told her Ms Berry's test results from the Thessalon competition would be applied to her application for the Blind River job. She also



says Sgt. Ostrom told her that the decision to hire Ms Berry was nothing against Ms Lannin or her work but that the District Headquarters had something against her husband's position and the fact that he would not be in Blind River permanently. Sgt. Ostrom denies saying anything like this, or hearing anyone of his colleagues in OPP management expressing such an idea.

At this point, Ms Lannin says she told Sgt. Ostrom she would file a grievance through the Ontario Public Service Employees Union if Ms Berry's Thessalon test results were applied to the Blind River competition. A grievance was filed but was later withdrawn after advice from OPSEU that temporary employees such as Ms Lannin have no rights under the job posting language in the collective agreement.

Faced with the grievance, Sgt. Ostrom and Insp. Cobean apparently decided to offer Ms Lannin another chance at taking the test. There are different versions of what happened next, but it is clear that the OPP was insisting that Ms Berry should also get another chance also. But Ms Lannin insisted that only she, as the candidate originally recommended, be given the opportunity to prove that she could pass the test, and that she would pursue the grievance if Ms Berry was given the opportunity. The proposal for a retest fell apart because of this disagreement, and around Dec. 18, the OPP decided to start from scratch by posting the job again.

Also on Dec. 18, Ms Lannin recalls a conversation with Sgt. Ostrom and Sgt. Dawson, who was visiting the Blind River detachment. She said Sgt. Dawson said a recommendation to hire someone like Ms Lannin didn't mean anything if another candidate "knew somebody." Both men deny anything like this was said.

Meanwhile, the Thessalon competition had been completed. Interviews with five candidates had been conducted on Dec. 9 by Insp. Cobean and Sgt. Dawson. Ms Berry shows up as the second choice on the Competition Summary, behind Kathy Pertelli, who was hired. Sgt. Dawson said Ms Pertelli, who is still working in Thessalon, is married and has two children and that her husband is a prison guard. He said the only such detail he might have known when she was hired was that she was married.

The Blind River job was reposted with a closing date for applications of Jan 22, 1988. Ms Lannin applied again, as did Ms Berry and Ms Beenen, and a new candidate, Suzanne Gatien.

Interviews and tests took place on Feb. 9, 1988 in Blind River. Ms Lannin said she had been told by Sgt. Ostrom she would not have to be interviewed again or take the typing test again because she had passed it before. Sgt. Ostrom denies having said this. Ms Fotia, from the Solicitor General's human resources branch in Toronto, told the hearing that the policy at that time was that if a competition was rebid, a candidate would not have to take a

test she had already passed.

Nevertheless, Ms Lannin was given both the shorthand and typing tests on Feb. 9. The tests were administered by Ms Morin. Ms Lannin said she has no complaint about the shorthand test, but the typing test was not fair. She said she was not given an opportunity for a practice period--required under government guidelines for these tests--and she felt that she was not given the full five minutes for the test. Ms Lannin said a few weeks after the test she tested herself and found that she typed the same amount in three minutes that she had typed during what was supposed to be five minutes. Ms Morin could not recall much about the test, but said it was possible that she did not give Ms Lannin practice time but that she's sure she would have given the full five minutes.

In any event, Ms Lannin failed the typing test with a score of 40.8 words per minute. A pass is 50 words per minute with a 4% error rate, or 48 words per minute with a 2% error rate. On the first Blind River typing test, she had been given a passing score of 52 words per minute. She did, however, pass the Feb. 9 shorthand test with a 93%.

The interviews that day were conducted by Insp. Cobean and Sgt. Noble Needham, both from the Sault Ste. Marie headquarters. Ms Lannin said Insp. Cobean asked her during the interview what her

husband did, and "mentioned something about us moving around so much." She said one of the two asked whether she had any school-aged children. Insp. Cobean testified that he stuck to a list of questions that he had prepared beforehand in consultation with the Ministry's Employee Services Branch, but said Sgt. Needham asked her about her family after the interview was over. Insp. Cobean said he himself was already aware of Ms Lannin's marital status and that she had children.

Sgt. Needham, who is now retired, says he remembers asking Ms Lannin how many children she had. He said he had only a junior role in the interview and that he was "more or less just passing the day." He described his question as "just a shoot-the-breeze type of question." He no longer has his notes of the interviews, he said.

Insp. Cobean's notes from that day make no reference to Ms Lannin's age or marital or family status, nor to that of Ms Berry or Ms Beenen. His notes of Ms Gatien's interview say she is 27 and married with two children. He explains this as part of her response to his first prepared question, which reads "Would you tell us about yourself and your work related experiences?"

The Competition Summary ranks Ms Berry first, noting that she passed both the typing and shorthand tests on Feb. 9. Ms Lannin is marked second, having failed the typing test. Both Ms. Beenen and



Ms Gatien were listed as having failed the shorthand test.

Ms Berry was offered the job on the basis of that recommendation and is still working at the Blind River detachment. She was 21 and single when she was hired. Ms Berry was not called as a witness at the hearing into this complaint.

Ms Berry was given a score of 53 words per minute on her typing test, but it is now obvious that her test was marked improperly. It was not a simple case of typing errors not being detected; the entire formula that was used to compute her score was incorrect, and differed from the formula used to compute the other candidates' scores. The different formula had a significant impact: marked correctly, Ms Berry would have failed instead of being given a passing grade.

Carolyn Truman, a senior human resources official with the Solicitor-General's Ministry, told the hearing that a rescoring of the tests by her office some time after Ms Berry was hired showed her correct score on the typing test to be 46.8 words per minute -- a failing mark.

That was not the only error, although it was the most serious one. Ms Truman's office also found that Ms Lannin had been scored too high on her first typing test on Nov. 10 (52 vs 50.2 words/minute, both passing scores). Ms Lannin was also scored too

high on her second typing test, Feb. 9, (40.8 vs 38.3 words/minute, both failing scores.) In addition, Ms Lannin was scored too high on the Feb. 9 shorthand test (93% vs 85.9%, both passing scores.)

Ms Morin, who marked all these tests, said she is aware now that errors were made, but denies any mistakes were intentional and said no one ever attempted to influence her marking or administration of the tests or suggested that any candidate was to be treated differently from the others.

In addition to these mistakes, the unsuccessful candidates were sent letters of rejection from Toronto dated Feb. 9 --the same day as the tests were conducted. This fuelled suspicion that the competition was unfair, and Sgt. Ostrom said he received calls from both Ms Beenen and Ms Lannin expressing concern. Ms Fotia testified that this resulted from an error by a computer operator in Toronto, and that the letters were actually not produced or sent until some time after the Feb. 9 date that appeared on them.

Ms Lannin, having been denied the job, still had the grievance outstanding. She also wrote to the Commissioner of the OPP protesting against the hiring process and decision. She requested, under Freedom of Information legislation, documents relating to the test results and pursued this issue in an appeal to the Information and Privacy Commissioner. She also pursued a complaint through the Ombudsman's office. She wrote to her member of the Legislature.

And she complained to the Ontario Human Rights Commission, the process that led to this hearing. She has clearly spent a lot of effort challenging her denial of the job and suffered considerable anguish as a result of the events described above.

I found Ms Lannin to be a credible witness. Although the events at issue took place about 5 1/2 years before the hearing, she had taken notes at the time. Her notes were more thorough than those of the OPP witnesses. Sgt. Ostrom and others from the OPP agreed she had been a trustworthy employee. Her story has been consistent throughout the years and in the many forums where she has taken the complaint. And the events of late 1987 and early 1988 were surely of more importance in her life than they were in the lives of the OPP officers, so that her independent memory is likely to be better. Comments that Ms Lannin testified to and that were denied by the OPP seemed well within the realm of possibility.

When assessing credibility, I was also troubled by one element of the testimony from the OPP officers, which indicated that at least one OPP witness was not telling the truth. It is clear from the evidence that after the Thessalon tests, someone told Ms Berry that she would likely be offered the Blind River job. This is clear because once Ms Lannin filed the grievance and the OPP decided to repost the Blind River job, Sgt. Ostrom called Ms Berry and told her she would not be offered the job after all, and would have to compete for it again. Yet Sgt. Ostrom, Sgt. Dawson and Insp. Cobean

all deny ever telling Ms Berry that she would be offered the Blind River job. The only other person who might shed light on this -- Ms Berry -- did not testify. (It is interesting to note that the documentary evidence shows that Ms Berry failed her typing test in the Thessalon competition with a score of 46 words per minute, although there is a handwritten notation on her test that reads "Typewriter was not working right." This note was not referred to or explained at the hearing.)

I conclude, therefore, that it is probable the comments attributed by Ms Lannin to the OPP officers were made. What to make of those comments is a separate issue. Ms Lannin's interpretation of events and comments has tended to emphasize the view that the job competition was fixed against her from the beginning. However, actions which may seem to be part of a concerted effort to treat someone unfairly may simply be the result of carelessness, stupidity or incompetence.

#### VIOLATION OF THE CODE DURING THE INTERVIEWS

The Commission has asked for a finding that there was a violation of the Human Rights Code on the basis of Section 23 (2), which reads as follows:



"The right under section 5 to equal treatment with respect to employment is infringed where a form of application for employment is used or a written or oral inquiry is made of an applicant that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination."

Counsel for the OPP concede that inappropriate questions were asked at both the Nov. 10, 1987 and Feb. 9, 1988 interviews, and that some damages are appropriate for the asking of the questions.

I find that Ms Lannin's right to equal treatment in employment without discrimination because of age under Section 5 was violated when Det.-Sgt. Webb asked her age on Nov. 10.

I find that Det.-Sgt. Webb questioned Ms Lannin about her husband and how long he would remain in Blind River and that this "directly or indirectly classifies or indicates qualifications" (to use the language of Section 23 (2)) by marital status -- another prohibited ground under Section 5. I therefore find that Ms Lannin's right to equal treatment in employment without discrimination because of marital status was violated on Nov. 10.

I also find that in the Feb. 9 interview Insp. Cobean asked Ms Lannin what her husband does. This also violated Ms Lannin's right to equal treatment in employment without discrimination because of marital status.

In both the above cases, had the interviewers been concerned

about how long Ms Lannin would stay in the job, they should have simply asked her that question directly, rather than asking a question about her husband, which carries with it the assumption that a woman will always quit her job when her husband is offered an opportunity in another location.

I further find that Sgt. Needham's Feb. 9 question of Ms Lannin about her children classifies or indicates qualifications by family status -- another prohibited ground under Section 5, and defined in Section 10 as "the status of being in a parent and child relationship". Therefore Ms Lannin's right under Section 5 to equal treatment in employment without discrimination because of family status was been violated.

In its defence, the OPP points to the inexperience of the OPP officers in job interviews, an explanation which has some merit. Counsel also note that Ms Lannin's age was already on file at Blind River on the form she filled out when she accepted the temporary job. In addition, I agree that someone who wants to discriminate on the basis of age does not need to ask for a date of birth in an in-person interview. This is particularly true of police officers, who are probably better than average age-guessers. I also accept that in a small town such as Blind River, and in an office where she was already working, Ms Lannin's marital and family status would probably already be known.

The OPP also contends that officers commonly ask for dates of birth as a matter of habit. I accept that is true, yet even inexperienced interviewers should have realized there is a difference between a criminal investigation and a job competition and acted accordingly.

These considerations may be important in assessing whether the questions were part of an effort to deny Ms Lannin the job on the basis of age, marital status or family status, but they do not affect whether the interview questions violate the Code.

It is important to note, and counsel for the OPP agreed, that for Section 23 (2) to be violated, there need not be any intention to discriminate, nor is there any requirement that the information obtained by the improper questions result in actual discrimination.

The evidence of Ms Fotia indicated that the Solicitor-General's Ministry has made important strides since the events described above to ensure that recruitment practices are consistent, fair and sensitive to human rights, and that managers receive more training. In 1990 the Ministry created, for the first time, a human resources manual which, among other items, lays out interview policies. It emphasizes human rights concerns and also says that where a hiring is contingent on a security check, the candidate will not be asked for a date of birth -- necessary to perform the security check--until after the job offer is made. Ms

Fotia added that the ministry's human resources branch is now more directly involved in each job competition than it was in 1987-88.

The Commission did not ask for any remedy under Section 41 (1) (a) -- the general power to ensure compliance with the Code -- apparently because of the evidence that the ministry has made efforts to ensure improper questions are not asked. I will make no order under the section.

Section 41 (1) (b) gives this board authority to make an award of damages for the loss to Ms Lannin of her right to be free from discrimination.

I think it is appropriate to award Ms Lannin \$500 for each of the four violations of her rights arising from the interview questions. The award will be jointly against all the respondents, with the exception of Sgt. Ostrom, who did not ask any of the improper questions. The award will be against Insp. Cobean only in respect of the Feb. 9 violation that resulted from his question.



## VIOLATION OF THE CODE IN FILLING THE JOB

Ms Lannin's contention is that the discrimination indicated in the interview questions was a factor in how the OPP filled the job, and explains why a 21-year-old single woman was hired instead of her, a 46-year-old married woman with children. The OPP, while admitting the improper questioning, says there was no connection between these violations of the Code and the decision to hire Ms Berry instead of Ms Lannin.

The cases are clear (see for example Holden vs. Canadian National Railway (1991) 14 CHRR D/12) that a violation of the Code will be found where discrimination is a basis -- not necessarily the only or primary basis -- for the decision of an employer to deny a job.

The evidence in this case is entirely circumstantial. In such a case, once the complainant presents evidence from which an inference of discrimination can be drawn, it is up to the respondents to put forward some other explanation for their actions. If the inference of discrimination is more probable from the evidence than the explanations offered by the respondents, then a violation of the Code is established.

In this case, the improper questions put to Ms Lannin, combined with some of the other comments that she cited in her

evidence, can support an inference of discrimination. The OPP explains its actions in hiring Ms Berry primarily by pointing out that Ms Lannin never did pass both her typing and shorthand tests in the same competition, and that when Ms Berry was hired, the OPP believed that she was the only candidate who had passed the tests.

In assessing the evidence in this case, it is not difficult to conclude that Ms Lannin was the victim of an unfair process and likely would have been hired had the process been fair. I have no doubt that she could pass the technical tests when they were administered and marked properly. Even on the OPP's own evidence the hiring process was seriously botched. Among the facts that are undisputed: Ms Lannin was asked improper questions in both interviews; her second shorthand test was interrupted; she should not have been required to take the typing test over again once she had passed; and the test marking was at the very least sloppy, resulting in Ms Berry's failed typing test in the last competition being graded as a pass.

However, although she has good reason to feel that she has suffered an injustice, Ms Lannin must in this case show that there was a particular type of injustice, namely discrimination on the grounds prohibited by the Human Rights Code.

After considering all the evidence, I have concluded that discrimination on the basis of age, family status and/or marital

status is a less probable explanation for the failure to hire Ms Lannin than the alternative explanations.

A number of facts lead me to this conclusion. Primary among them is that after the first competition -- and after the initial discriminatory interview questions -- Ms Lannin was, in fact, recommended for the job. The OPP had every reason to expect that she would get the job: all that was required was a passing grade on the technical tests, an accomplishment no one would label as too daunting for someone with Ms Lannin's experience. But she failed the shorthand test, even though it was a fair test, thereby setting in motion a set of events which, with a substantial amount of bungling along the way, resulted in the hiring of Ms Berry.

The written recommendation to hire Ms Lannin at that point is a clear indication that while questions about age and marital status were asked, the information elicited did not become a factor in the hiring decision, at least to that point.

If the questions were not important, why were they asked? Sgt. Needham's answer that some of the questions were asked to "shoot the breeze" may provide part of the answer. The desire to acquire information about a job candidate, even if irrelevant and in this case improper, may explain it also. It does not surprise me that police officers sometimes ask people a lot of questions.

Ms Lannin alleges that Sgt. Ostrom wanted to hire Ms Berry from the start. But he didn't act that way. He renewed her temporary contract, he recommended her for the permanent job, he helped arrange her shorthand retest -- which was not supposed to happen under the hiring procedures -- and he drove her to Thessalon for the retest.

Counsel for the Commission suggested that Sgt. Ostrom's recommendation of Ms Lannin was the only one he could justify because of her clear edge in qualifications, and that he actually wanted Ms Berry even at this stage. I do not accept this. I believe that had the interviewers wanted Ms Berry, they could have recommended her, worded the Competition Summary accordingly, and could have justified it to their superiors.

Counsel also questioned why, after the interrupted Thessalon test, the OPP would insist that Ms Berry be offered a retest along with Ms Lannin. The suggestion is that because of her age and marital status, there was an effort to bring Ms Berry in "from the back of the pack" and to ensure she won the competition while placating Ms Lannin. Yet it seems to me logical that, in a situation that had already become difficult because of a threatened grievance, the OPP would offer a retest to Ms Berry -- who had apparently already been told she had the job -- simply to prevent her from complaining, too.



As for Sgt. Ostrom's remark that the District Headquarters favoured Ms Berry over Ms Lannin because Ms Berry wanted a career, this strikes me as the kind of remark that could easily have been tossed off by someone in Sgt. Ostrom's position -- without any basis for it in fact -- as a misguided attempt to console Ms Lannin. The remark is on its face damaging to the OPP's position, and Sgt. Ostrom now denies making it. But I believe it was said, and is explainable in the context of a boss giving bad news to an employee. The same is true for the "my wife thinks I'm a shit" remark.

The comment that there was a bet on who would get the first-place and second-place candidate in Thessalon -- assuming it was made -- can probably be interpreted a number of different ways, but it seems strained to infer a discriminatory meaning here.

Ms Lannin testified that Sgt. Dawson commented that a recommendation doesn't count for much if one of the candidates knows someone. This is grist for more speculation. It could mean that the fix was in to get Ms Berry the job. But even if this is true, it does not necessarily point to discrimination on the grounds prohibited by the Code. In fact, it more likely suggests that Ms Berry was being favoured because of her connections to someone in authority at the OPP, not because she was young and single. I hasten to add that there was no evidence that Ms Berry knew anyone in authority; however, it illustrates that a process

that may be unfair may not violate the Code.

Ms Lannin and the Commission suggest that the flawed marking of the tests -- and in particular the improper formula that gave Ms Berry a pass on her Feb. 9 typing test when she should have failed -- points to a finding that Ms Lannin was being discriminated against in favour of Ms Berry. Agreeing with this would entail finding a fairly elaborate effort in which Ms Morin, who marked all the tests, either intended on her own to tamper with the results or was instructed to do so. I am not prepared to make this leap. While I do not dismiss it out of hand, it appears more likely that Ms Morin was simply another amateur in a very unprofessional hiring process. For one thing, some of her errors benefitted Ms Lannin, although unlike in Ms Berry's case, those errors did not make the difference between a failure and a pass.

Unless I am prepared to make the leap to say that the test administration was fixed rather than just sloppy, the key fact remains this: at the time of the hiring, Ms Berry appeared to have passed the tests and Ms Lannin hadn't. This is the most likely explanation of the OPP's actions in hiring Ms Berry, and it is a non-discriminatory one.

I therefore find that on the balance of probabilities, discrimination because of age, marital status or family status was not a basis of the decision to refuse Ms Lannin the position.

I am aware that for Ms Lannin this finding will smack of a bureaucratic response, akin to saying "You were treated unfairly, but it's not my department." Unfortunately, the Human Rights Code cannot be used to remedy all types of unfairness, but only those that result from discrimination on the prohibited grounds. I noted that the Office of the Ombudsman recommended that Ms Lannin be informed of future competitions for which she might be qualified, and I hope the respondents will seriously consider this.

#### ORDER

For the reasons above, I order:

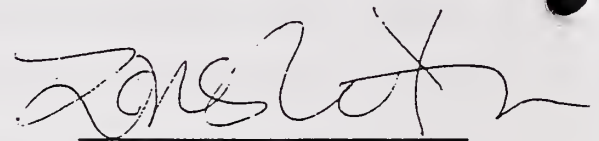
1. That the respondents Her Majesty the Queen in right of Ontario, Ministry of the Solicitor-General and Ontario Provincial Police, jointly and severally, pay \$500 to Carole Lannin for violation on Nov. 10, 1987, of her right to equal treatment in employment without discrimination because of age.
2. That the respondents Her Majesty the Queen in right of Ontario, Ministry of Solicitor-General and Ontario Provincial Police, jointly and severally, pay \$500 to Carole Lannin for violation on Nov. 10, 1987, of her right to equal treatment in employment without discrimination because of marital status.
3. That the respondents Her Majesty the Queen in right of Ontario,

Ministry of the Solicitor-General, Ontario Provincial Police and Douglas Cobean, jointly and severally, pay \$500 to Carole Lannin for violation on Feb. 9, 1988, of her right to equal treatment in employment without discrimination because of marital status.

4. That the respondents Her Majesty the Queen in right of Ontario, Ministry of the Solicitor-General and Ontario Provincial Police pay \$500 to Carole Lannin for violation on Feb. 9, 1988, of her right to equal treatment in employment without discrimination because of family status.

DATED at Toronto Ontario,

July 29, 1993.

A handwritten signature in dark ink, appearing to read 'Lorne Slotnick', written over a horizontal line.

Lorne Slotnick  
Board of Inquiry